In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 271

UNITED STATES OF AMERICA, APPELLANT

v.

ALUMINUM COMPANY OF AMERICA AND ROME CABLE CORPORATION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF NEW YORK

JOINT SUGGESTION OF MOOTNESS AND MOTION TO VACATE

Appellant and appellees jointly move the Court to vacate as moot the judgment of the district court approving the plan of divestiture, entered on January 20, 1967, and to remand the case to the district court with a direction to conduct further proceedings.

This is a suit by the United States charging that the 1959 acquisition by Aluminum Company of America ("ALCOA") of the Rome Cable Company ("Rome") violated Section 7 of the Clayton Act. On

appeal from a dismissal of the action this Court reversed and remanded for divestiture proceedings. *United States* v. *Aluminum Company of America*, 377 U.S. 271.

A decree of divestiture was entered by the district court on April 27, 1966. Pursuant to that decree the district court approved a sale of Rome's facilities to the Okonite Company, an 83%-owned subsidiary of Ling-Temco-Vought, Inc.

Appellant opposed the sale because in its view it did not constitute appropriate and adequate relief under Section 7 of the Clayton Act. It took this appeal which was docketed on June 20, 1967. Appellees moved to affirm on September 1, 1967.

The contract for sale of Rome's assets to Okonite is memorialized in certain letters of agreement providing that either party may cancel the transaction on written notice to the other. On October 2, 1967, ALCOA advised Ling-Temco-Vought in writing that ALCOA was cancelling the agreement.

ALCOA has found another purchaser for Rome's facilities and the Department of Justice has determined that it has no objection to this purchaser. Under the terms of the decree, ALCOA must now apply to the district court for approval of the sale to the new purchaser.

Since the sale approved in the order appealed from has been cancelled, this appeal is now moot.[1] Accord-

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[1] The government's appeal also challenged certain provisions of the decree of divestiture entered April 27, 1966. The parties jointly urge that since the district court's judg-

ingly, the parties join in requesting this Court to vacate as moot the judgment of the district court approving the sale and to remand the case to the district court for further proceedings. Cf. *United States* v. *Munsingwear*, 340 U.S. 36, 39.

Respectfully submitted.

RALPH S. SPRITZER,
Acting Solicitor General.

HERBERT A. BERGSON,
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ment of approval has become moot, it is unnecessary for the Court to consider these issues or the timeliness of this aspect of the appeal.

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